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IN THE COURT OF APPEALS  
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STATE OF WASHINGTON

AP

Court of Appeals of the State of  
Washington  
Division II

NO. 54241-2-II

Statement of Additional  
Grounds

Washington vs Marshall M. Wilson

11/23/20  
P.M.

Please Forgive my informality, I have no access to a typewriter and have been receiving treatment for my P.T.S.D Anxiety and Depression.

I have more issues I want addressed but do not know how to properly formulate them. This was very difficult and I received help from other inmates.

Thank You

Issue One - Cumulative Errors - Constitutional Right to a Fair Trial - U.S. Const. VI, XIV

Issue Two - Knowing Use of False Testimony - Constitutional Right to a Fair Trial U.S. Const. VI, XIV

## ISSUE ONE

The State committed Prosecutorial Misconduct by proposing the Knowledge instruction be inadvertently removed along with the Firearm instructions.

It was Ineffective assistance of counsel for Def. Counsel failing to object to the Courts removal of the Knowledge instruction and failing to request an instruction instructing that the Jury Apply Accomplice Liability only to the Felony Charges being decided and not the Fight which preceded the shooting.

It was Judicial Error and abuse of discretion to allow the removal of the Knowledge instruction by the Trial Court due to the case specific facts and circumstances of the Prosecutions misconduct conflating the Accomplice liability and misstatement of that law. Knowledge also being a requisite Mens Rea element.

Jury instruction errors are reviewed for Constitutional harmless error.

\* State V Berube 150 Wn.2d 498, 505 79 P.3d 1144 (2003)\*

A constitutional Error is harmless if it appears "beyond a reasonable doubt that the error did NOT contribute to the ultimate."

"Verdict". Berube 150 Wn.2d at 505

Instructions allowing the Jury to convict the defendant without finding an essential element of the crime charged improperly relieve the State of its burden to prove all elements of the crime charged beyond a reasonable doubt; this type of error violates the Defendant's Constitutional Right to a Fair Trial

(State v Castillio 2009 Wash.App LEXIS 1069  
State v Barnes 153 Wn.2d 378, 382, 103 P.3d 1219 (2005))

State v Brown 147 Wn.2d 330, 340, 58, P.3d 889 2002; Stein 147 Wn.2d at 341 Citing Neder 527 U.S. at 18) and (Brown 147 Wn.2d at 341 quoting Neder 527 at 19)

State v Montgomery 163 Wn.2d 577 (2008)  
{163 Wn.2d 600} "An improper Jury instruction may be harmless error so long as the Jury is properly instructed on the States' burden."

State v Frost 160 Wn.2d 765, 780, 161 P.3d 361 (2007) "An erroneous instruction is harmless if, from the record in [the] case, it appears beyond a reasonable doubt that the error complained of did not contribute to the

Verdict obtained."

"Whether a flawed jury instruction is harmless error depends on the facts of a particular case." State v Carter 154 Wn.2d 71, 81, 109 P.3d 823 (2005) (alteration in original) (quoting State v Brown 147 Wn.2d 330, 332, 58 P.3d 889 (2002))

In this case, the State ① lowered the Reasonable Doubt Standard ② Misstated the Law of Accomplice Liability ③ The Court Failed to Correct it Thus Altering the Jurys perception during deliberations, of Accomplice liability and its Mens Rea Element ④ Absence of the Knowledge instruction normally not an automatic reversible error in this case the Jury requested that Knowledge be defined. Cumulatively, These Errors have denied Defendant Wilson of a Fair Trial

"The cumulative error doctrine applies -- when several trial errors occurred which, standing alone, may not be sufficient to justify a reversal, but when combined together may deny a defendant a fair trial." State v Hodges 118 Wn. App 668, 673, 77 P.3d 375 (2003)

Thus, As in Pers. Restraint of Sims  
118 Wn.App 471 (2003) where there was evidence  
of an uncharged crime Assault & Fight  
There is a substantial likelihood that  
the jury convicted Wilson because of  
his involvement in the fist fight rather  
(and that he "knew" it took place) rather  
than finding that he encouraged or  
Facilitated the shooting

"To Show prejudice, however a defendant does  
not necessarily have to prove that he would be  
acquitted but for the error. Rather as courts  
have noted in other contexts, a defendant is  
prejudiced by a trial error if there is  
{73 p.3d 401} "Reasonable probability" that the  
error affected the trials outcome and the  
error undermines the court's confidence  
in the trials fairness." Kyles V Whitley  
514 U.S. 419, 431, 115 S. Ct 1555 131 L.Ed  
2d 490 (1995) (citing Strickland V Washington  
466 U.S. 668, 693, 102 S. Ct 2052, 80 L.Ed 2d  
671 (1984)

## ISSUE 2 Knowing Use of False Testimony

"Under the United States Constitution, the Sixth and Fourteenth Amendments guarantee persons accused of a crime the right to a Fair Trial. *State V Davis* 141 Wn.2d 799, 824-25 10 P.3d 977 2000 The Washington State Constitution Provides a Similar Safeguard WA. CON. ART. I §§ 3-22

"The due Process clause of the Fourteenth Amendment to the United States Constitution imposes on Prosecutors a duty not to introduce perjured testimony or use evidence known to be false to convict a defendant. *State V Finnegan* 6 Wn. App 612, 616, 495 P.2d 674 (1972)

"The duty also applies where the government does not solicit the false testimony and merely fails to correct it" *Napue V Illinois* 360 U.S. 264 269-70 79 S. Ct. 1773, 3 L. Ed 2d 1217 (1959)

"Use of Fabricated evidence deprives the accused of liberty in violation of Constitutional Due Process"

*Jones V State* 170 Wn.2d 338, 350, 242 P.3d 825 (2010)  
A conviction obtained by the knowing use of perjured testimony Must be set aside if there is any reasonable likelihood that the false testimony could have affected the Judgment of the Fact Finder. *State V Larson* 160 Wn. App 577, 594, 249 P.3d 669 (2011)

To Succeed on a claim that the prosecutor used false evidence to convict him one must meet Zuno-Acre Elements

- (1) Testimony or Evidence Was Actually False
  - (2) The prosecutor Knew or Should have Known that the Testimony was Actually False And
  - (3) That the False Testimony was Material
- United States v Zuno-Acre 339 F.3d 886, 889  
9th cir (2003)

Zuno Acre Elements are met because

- 1) Olivia Brown's testimony that she stood by and watched both defendants shoot Foster side by side while saying stop shooting him until the Defendants stopped shooting Page 1500-1501 was actually and demonstrably false as evidenced by the video footage
- 2) The State knew this was patently false because the video clearly shows (and the States own admission) that Wilson was stop Johnasha Manning. The video only shows one person in Wilson's location shooting, that person according to testimony and the States Theory was not Wilson.
- 3) Olivia Brown's Testimony was Undeniably (false and) Material where she is both victim and wife of Mr. Foster, thus highly

probative to the State's case.

Further in The State's Closing  
The State tells the Jury that he can  
Show Tamika Williams outside of car  
in a video but did not and in fact  
cannot. Exhibit 44 shows at top  
mid screen by the light pole once  
Tamika Williams and Treshauna Perry  
Enter their car before the shooting  
they are in their car

ISSUE 3- Insufficiency of Evidence  
beyond a reasonable doubt of  
All counts including V

Shooting Diagram - This details The Movements of Daquan Foster, Olivia Brown, Wyatt Percell Marshall Wilson, Johnasha Manning - The first five people seen in the video footage in the rough 20 seconds between the physical altercation and the subsequent shooting.

NOTE that when the Sixth Person approached is when the shooting began, on the side of that vehicle there was only 6 people (discounting the two in the vehicle itself).

This Diagram is based on the Crime Scene Diagram Provided by, and testified to by, TPD D. Velez, The Video, and Witnesses, including testimony.

All of the numbered movements are shown as fact in the video, if Marshall Wilson was on top of Johnasha Manning how was he shooting?

- Red X's indicate the location of 9mm bullet shell casings
  - Light Blue O's indicate the location of 40 cal. bullet shell casings
  - The Stars indicate vehicles that remained after the shooting and arrival of Crime Scene Detectives.
- Letters indicate witness and car locations
- At the time of the shooting,
- A Red "SUV" in stall 7, this car is seen in the video, it is the video of the shooting that depicts this car's location.
  - B This car contains a witness who testified the shooter he saw was behind the car and wearing dreads
  - C This car is Tameka Williams' car, her and Treshauna Perry were in this car. TP was not called at trial but said both her and TW ducked inside
  - D This is Kay Kay/Michealina Scott's car (which left after Tameka Williams car) Pontiac Silver
  - E This is the Box Style 1990's BMW/BENZ type Tameka Williams saw the shooter sitting on before working up and shooting, note Tameka said the guy in dreads was driving this vehicle fast when it exited the lot with another car, right before she exited the lot
  - F May be the black car Olivia said Wilson was standing by, then later in the trunk of

G The same as F

H A Black car \* Could also be the car Brown claims Wilson was by or in

I - Silver Lexus \* This car was found with a Stolen Gun in its Cab(back seat)

J RIOS Was approximately here based off her testimony, Diagram she drew and Police Interview

K Courtney Garrett Was in the Vicinity of here When she observed M. Wilson getting up off the Ground, Move in the same direction as the Foster's before being confronted by Manning Face to Face. Garrett saw a man wearing "all gray" "right next" to her "within arms Reach" began firing toward where The Foster's and Wilson to include Manning were Standing NOTE: Garrett continued to hear shots while this person was getting into a car

L Lightpole next to Entrance/Exit

NOTE This Parking slopes up from South to North and less from East to West

The Stalls are numbered as in D. Velez

Diagram, From the Stall(west) 6-7 line to Stall(west) 14's Driver Side, Tameka Williams Location is approx 72' Feet by Velez Calculation

1 1 Blue 1 at 01:33:37 (plus 5 minutes) Wyatt Percell can be seen Wilson falls to the ground near his feet

2 2 Yellow 2 and line The Foster's (Foster, Brown, Percell) Move around the silver car in the thoroughfare of the parking lot, Foster is being pushed away

3 A 3A Wilson stands as the Foster's move, Wilson goes towards the Foster's 3B As Wilson is moving Johnasha Manning rushes passed Wilson turning face to face with Wilson (Dark Green) behind SUV

4 A 4A Another person, the sixth person, rushes up behind Wilson and Manning, this person raises his arm and flashes are seen

4 B 4B Daquan Foster Runs South to the left of the Screen 4C As Olivia Brown in burgundy is seen running south/south west to the top and left of the screen 4D While Wyatt Percell Wearing Pink runs EAST toward the camera/bottom screen and then exiting left (purple)

5 A While the shooting takes place you can see movement, Manning and Wilson end up on the side of the red SUV laying parallel

5 B With the vehicle and Wilson A-top Manning

6 A Is the same Sixth person from 4A he is shooting and walking backwards while 6B Two new people enter the view who have not been identified, The one in all gray has his arm extended as the two exit the

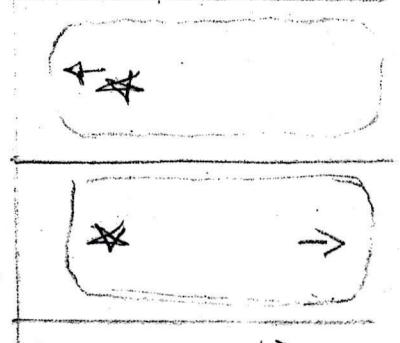
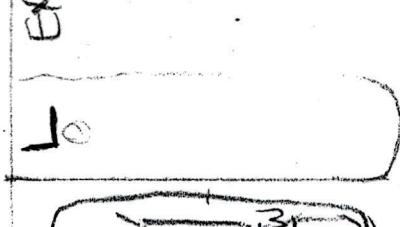
screen before the sixth subject. Note that where these 2 people briefly appear is the center between the 4 0.40 Cal casings.

7A While the above is taking place Car B begins to move forward and exits left. The back driver side window was shot out before it left. 7B is the sixth person, the shooter backing up (which includes pink (oA)) leaving a trail of 9mm shells as he exits left of the screen.

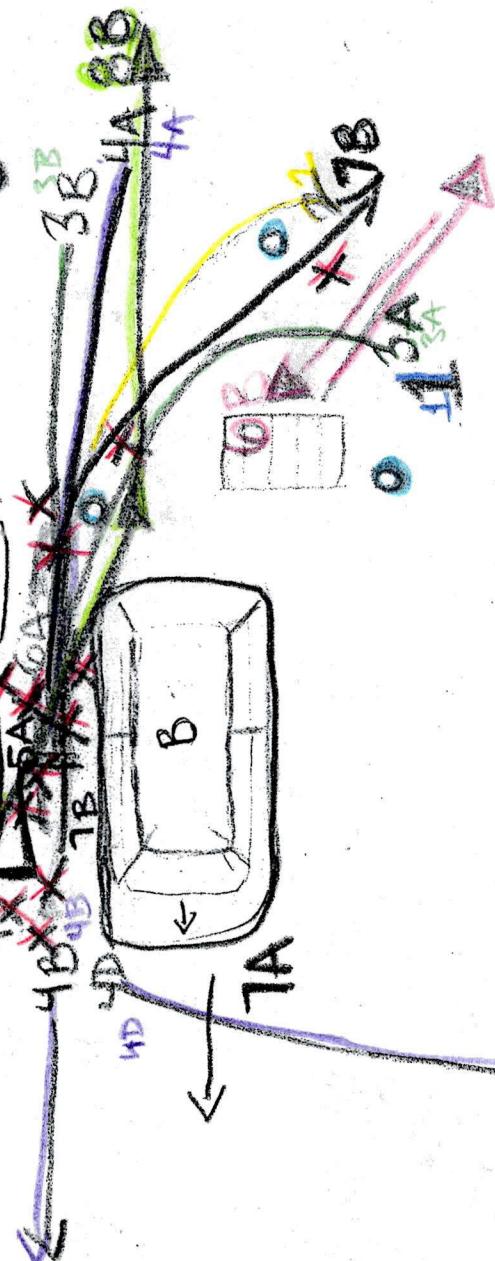
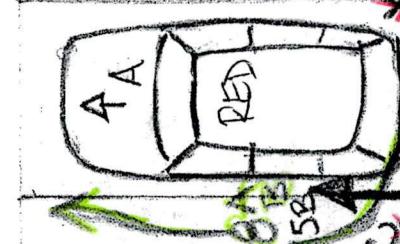
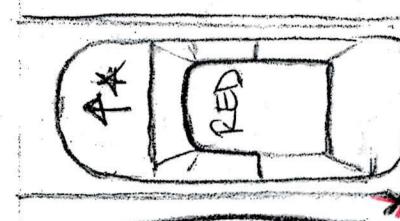
8A/8B light Green - 8A shows Wilson get up from the ground followed by Ms. Manning. 8B shows Manning walking to the top of the screen and Wilson walking around the back of the two red vehicles one being A. Wilson is seen turning in a full circle before exiting Right of screen. All of this taking place once the shooting stops.

~~W~~ ~~N~~  
5

J<sub>R</sub>



Unknown  
Full at shooting?

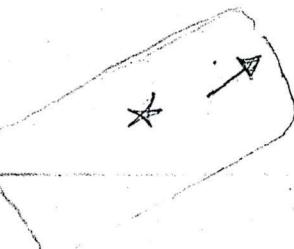


D KX'S  
GIVEN CAR

BOX CAP CAR  
SILVER

E I H \*  
BLACK BOX CAP SILVER

F BLACK?



1  
2  
3  
4  
5  
6  
7 PIERCE COUNTY SUPERIOR COURT, STATE OF WASHINGTON

8 Marshall Marion Wilson  
9 Defendant

10 VS No. 17-1-04228-7

11 The State of Washington  
12 Plaintiff

Letter of Allocution

13 COMES NOW Marshall Marion Wilson  
14 on his own behalf 11-22-19

15 First and most importantly my truest  
16 compassion is extended to the family and friends  
17 of Daquan. Undoubtedly this young man should not  
18 have lost his life, for any reason, you all and he  
19 are not forgotten in my prayers. Please do not  
20 construe any thing I say today to this court  
21 and all who will listen, as my statements  
22 undermining the value of his life, which is  
priceless, my blessings, whether you accept  
them or not, are yours.

23 Before I reach the depth of my allocution,  
24 I share this, I did not kill Daquan Foster,  
25 your son, your friend, your brother, your father  
our serviceman. I assure you if I had  
26 the power, time, position to prevent his  
death, Daquan would still be alive. And not  
27 because I am in jail but because of

1 the man, the brother and the father I  
2 was October 29th 2017

3  
4 In November of 2012 My little brother  
5 Was Stabbed and Shot while My Big brother.  
6 Was shot and killed over a fight over a  
7 disagreement of some sort. The loss of  
8 this football coach, family man, My reason  
9 for football. My reason for popping rocked  
10 my core. I Share this to illustrate my  
11 mind state as that loss of life is  
similar to that of Dequans. Why?

12  
13 I dont know, I do know that I  
14 would never use a gun because of a  
15 fight, I also know that I did not and  
16 do not carry a gun. I myself have been  
17 shot 11 times on 8 different occassions,  
18 when I later crossed paths with one  
19 of the people who had shot me I  
20 showed my wolst to show that I was  
21 not carrying and then we had a 1 on 1  
22 fight. My father taught me to box, I took  
23 Tae Kwan Do and Wrestled in high school.  
I take my wins with my losses.

24 About a week from today, last week,  
25 I met with my attorney, my investigator  
26 and a polygraph specialist. The reason for  
27 this was to show that I had no idea  
28 that a shooting was going to take place.

1 To show I did not see who shot, to  
2 show I never possessed either alleged  
3 Murder Weapons nor Shoot one myself.  
4 Unfortunately because of my memory  
5 loss of the shooting the specialist  
6 said he would not give me the test.  
7 The reason being that IF someone  
8 cannot remember events or circumstances  
9 the test would read whatever that persons  
10 belief or perception was. And sometimes  
11 our beliefs and our perceptions are not  
12 truth, but our beliefs that something is  
13 true even if it is in fact false will  
14 register as truth because it is your belief  
15 or perception of any given thing that  
16 what one says they saw is true, thus  
17 one can be very wrong and be credible.  
18 Please take that in to account when  
I reach Mr Rios and Ms Williams.

19 During the course of this prior  
20 trial I heard the term "Intellectual  
21 Dishonesty". That is what Vold, Grother,  
22 Jesse Williams and Robin Sand are very  
23 much guilty of. And yes they spun a good  
24 web of intellectual Deceit. We must  
25 Remember that even prosecutors, cops  
26 and more are also human... even when  
27 it comes to being dishonest and  
28 manipulative. So please take a look  
at the whole evidence, logically & unbiased.

1 Hopefully this court will weigh objectively  
2 and subjectively the evidence highlighted within  
3 this letter of Allocution. Hopefully my trust  
4 in the dignity of this court will logically  
5 weigh all that is shared despite prior  
proceedings and their findings.

6 I know that with Allocution you can  
7 decide based on facts not used at trial.  
8 I attempt to show this court why I am  
not guilty. And remember I am not saying  
that Tanika Williams or Kristina Rios  
lied. Take in to account that one of the  
States witnesses did in fact say she  
was about 40+ feet away from where the  
Fosters were, where Johnnies Manning was  
face to face with me - 40' feet away from  
where the video catches shooting Courtney Garrett  
sees a shooter within arms reach from  
her pull out a gun and begin shooting.

## OLIVIA BROWN

16 The most important factor being ignored  
17 or overlooked in weighing her testimony  
18 is the contrast between not only her prior  
statements but the video footage itself  
19 which impeaches her testimony.

20 Ms. Brown was wearing a burgundy shirt  
21 which she identified herself as wearing  
22 in the video. Ms. Brown testified that  
she stood right there and watched me and  
some other person shoot both her and  
23 her husband. That she stood there after  
being shot in her hand and said stop shooting  
him. Then once the two shooters shot and  
stopped, then she ran.

24 The video however shows 3 people running  
25 one in burgundy south-west/left of screen  
26 one directly south left middle screen, and one

1 East then South toward the camera then Left  
2 off screen. The car moves out of the way.  
3 So I shooter backs up exiting Right of  
4 screen. Before going much further lets  
5 point out how many people were physically  
6 present on the video.

7 Wilson falls in view. The fosters move  
8 around the car to the left of screen  
9 (Dequan Foster, Olivia Brown (Burgundy), Wyatt Perez (pink))  
10 3A Wilson getting up and moving around the  
11 car behind "the foster's" 3B Johnasho Manning  
12 is following from the Right to left behind  
13 Wilson and hurries passed M.Wilson turning  
14 face to face with Wilson both stopping in  
15 between a car in the parking lot lane on  
16 the Silver cars passenger side, and behind  
17 a red SUV 4A Another subject walks from  
18 Mid Right Screen right after Manning  
19 between the cars and begins shooting.  
20 4B.CD, 3 people RUN (The foster's) 5A As this  
21 takes place there is movement between  
22 the cars which is J.Manning and M.Wilson  
23 getting out of line of fire 5B ending  
24 up on the ground on the left side of  
25 the Red SUV, parallel to it 6A The shooter  
26 is still shooting 6B 2 people 1 wearing (H.O.CA)  
27 dark clothing and the other wearing all gray  
28 run closer to the car one has his arm extended  
as he re-enters the screen to the Right  
7A The car is moving forward as the primary

1 Shooter continues to shoot and walk to the  
2 right exiting the screen<sup>(B)</sup> leaving a trail.  
3 OF Shells SA/B: Mwilson gets up from the  
4 ground, J. Manning gets up and walks to the  
5 top of screen, Mwilson slowly walks to the  
6 right.

7 Before the shots took place there  
8 were only, only 5 people. When the sixth  
9 person walked up is when the shooting  
10 began. Olivia Brown ran immediately,  
11 she did not stay there until the shots  
12 stopped. Nor does it show 2 people  
13 side by side shooting, so how can her  
14 new memory be credible if the videos  
15 memory does not support her testimony?

16 Further Ms. Browns prior statements  
17 and documented communications with  
18 Detectives provided ample time to say  
19 oh yeah I do remember there were  
20 2 shooters and not 1. The court gave  
21 credit to excited utterance pertaining  
22 to a witness uttering their belief off of  
23 conclusions but TPD Anna Bratts, a first  
24 responder testified and wrote a report  
25 of her crime scene interview. Dot 11  
Date 7/1 circa 0141 hrs 10-29-17

26  
27 Anna Bratts relayed that Olivia Brown  
28 was very worked up and not very cooperative

1 When being asked questions, she was hyperventilating.  
2 and was not clear with her responses but when asked  
3 if she saw who shot her husband she described  
4 the suspect as a light skinned black with  
5 dreadlocks in a ponytail, a grill in his mouth  
6 and a black hoodie. This person was not the  
7 person who fought with Doguan, this  
8 person approached the small group and  
9 began shooting.

10 Anna Bratts TPD also spoke to Wyatt  
11 Perceii who also told her that the shooter  
12 was not the male who was fighting but  
13 another subject who approached after the  
14 physical altercation.

15 Ms. Brown's next documented interview  
16 DOT 6 BATE 55 10-29-17 circa 0224 hrs at  
17 TGH (Tacoma Gen. Hosp.) was with TPD  
18 Connor Cockle. Brown also described  
19 again only one shooter consistent with  
20 the description in her first encounter  
21 with TPD Anna Bratts.

22 Ms. Brown gave a detailed account of  
23 the male who was fighting with Doguan  
24 and his description. The male fighting did  
25 not shoot, he was described as "light  
complexion early 30's 5'8", stocky build  
about 180 lbs, in a leather coat that didn't  
fit and he was very drunk.

26 NEXT DOT 49 BATE 290 in an Interview  
27 Report by Det. Lindsey Wade on 10-29-17  
28 Circa 0345 at T.G.H TPD Wade details that

1 Ms. Brown described the person who punched  
2 her husband as a possibly hispanic male in  
3 his 30's Wearing a Black leather jacket  
4 that was too big and blue jeans. This  
5 was consistent and exactly what Mr. Wilson  
6 was wearing. This subject did not pull a  
7 gun nor shoot to her knowledge.

8 Also, O. Brown consistently describes  
9 the subject who approaches and shoots  
10 as a light skinned black male with dreads  
11 in a ponytail, black hoodie with @grills.

12 NOTE: Mr. Wilson had short curly hair.  
13 on this night

14 To highlight points we go to Dot 109.  
15 BATE 1781 The recorded interview transcript  
16 which was the basis for the above report.

17 At TGT. 0345 hrs Det. L. Wade and W. Muse  
18 - The guy who fought, not who fought  
and shot, "probably just puerto Rican"

19 O. Brown has no idea what was said  
20 between M. Wilson and D. Foster. She says  
21 she saw M. Wilson punch Daquan (but later  
22 says she did not) BATE 1787 Brown shares  
the guy who shot just walked up and  
shot. BATE 1788 Brown says the fighter  
23 was about to get in a black car

24 Brown is asked if she could identify  
25 the shooter. She says "yes absolutely"  
26 Wade asks "What about the guy your  
husband fought with?" Brown: I would  
27 recognize him. This was 10-29-17

1 DOT 68 BATE 494 10/31/17 at IPD HQ Det.  
2 Vickie Chittick takes a phone call from  
3 O. Brown on Det. Vold's phone while Vold is  
4 in an interview. Brown states her  
5 friend found a cell phone video posted on  
6 FB (Facebook) and that in that video is the  
7 non-plural shooter which notably is and  
8 was not M. Wilson.

9 Olivia Brown called TPD to point  
10 out some evidence which she felt would  
be helpful.

11 DOT 58 BATE 400 10/31/17 Vold, Wade, and  
12 Clother visit the Foster home. Report by  
13 Clother. Det. Wade asks Brown if her  
14 memory was still clear regarding the  
15 shooting. Brown answered yes, was asked  
16 if she recalled additional details. The  
17 only additional detail she gave was that  
18 the fighter had a baseball cap or a  
19 cup in his hands.

20 The details did not change that the  
21 shooter was a subject who approached  
22 and was the only shooter Brown knew of.  
23 This description of the shooter are at this  
24 point still consistent with previously given  
25 descriptions. And those descriptions cannot  
and are not fitting of M. Wilson.

26 Brown stated she was 100% sure the  
27 shooter she saw was the subject who was  
28 in the Facebook video.

1      Although Mr. Wilson Was a suspect at this  
2      Point the Detectives Failed to Show a  
3      Photo Montage of Mr. Wilson to any witness  
4      Who remained at the crime scene

5      Ms. Brown Was shown a Montage, 2 different  
6      Sets actually, none of which contained Wilson.

7      During this home interview Ms Brown  
8      Maintained a consistent description of the  
9      Shooter she saw as in all previous encounters  
10     with TPD. There was still only one shooter  
11     who was not the guy that her husband  
12     fought with.

13     MS Brown in this Interview and the  
14     preceding phone call in which she called  
15     to offer evidence helpful to the investigation  
16     did not recall that there were actually  
17     2 Shooters.

18     DOT 31 BATE 209 TPD Void 11-1-17  
19     Circa 1319 hrs Ms Brown again contacted  
20     Det. Vold to aid with the investigation  
21     and share something she recalled. Brown  
22     asked to see the Montage from 10/31/17  
23     again... She was told that she could not.  
24     She responded by saying "the person (not  
25     one of the people or one of the guys) who  
26     shot her husband "was on the table."

27     NOTE That Mr. Wilson Was not 1 of the  
28     Photos she viewed. And, still, there is only  
   one shooter she saw.

1 DOT 69 BATE 499 illustrates another later  
2 contact prompted by Brown. Det Clother  
3 receives a phone call from Brown asking that  
4 her husbands wedding ring be given to her.

5 11/14/17 Detective Clother met with Brown  
6 at TPD and released the ring. 16 days after  
7 the shooting Brown still only has seen one  
Shooter.

8 DOT 97 Bate 1520 Clother receives another  
9 documented phone call from Brown requesting  
10 Daquan Foster's phone be released. 12/18/17  
11 Vold and Clother met Brown at TPD HQ.  
12 They attempted to charge and access the  
13 cracked device unsuccessfully. Brown said  
14 she would get it fixed and if there were  
15 any pictures she would call. O.Brown did  
16 not relay that she recalled seeing the  
17 fighter pull or shoot a gun nor that  
18 she saw two shooters.

19 Defense Interview 2/28/19 a few things  
20 have changed, one being that M.Wilson  
21 was now in the trunk of a Black car.

22 Brown fluctuates from seeing Wilson hit  
23 Daquan to hearing Daquan say "you hit me in my  
24 fucking face" and not actually seeing it.

25 Brown says her memory was probably  
26 clearer previously.

27 Brown says that Marshall said something  
28 to Daquan, Wilson was in the trunk of  
his black car, note that Wilson's car was not

1 black and approximately 50' away from where  
2 Marshall Wilson is seen after being struck  
3 on video. Ms. Brown for her very first time, despite  
4 all of her contact with the victim's advocate, police  
5 and prosecution previously, 18 months later says the  
6 person who fought with her husband also shot, the  
7 first shot coming from the person who walked  
8 up to the first fire, and saying Wilson then pulled  
9 a gun and shot other freeing husband while she  
10 stood there saying "stop shooting him after herself"  
11 being shot, she, only running once Wilson and the  
12 other subject stopped shooting, claiming she stood  
13 right there. This she testified to at trial and  
14 the court relied on this despite all of those  
15 previous interviews and contacts and despite the  
contrary video footage.

16 Hayes v Woodford 301 F.3d 1054 (9th Cir):  
17 Prosecutor has Constitutional duty to correct  
evidence he knows is false.

18 Phillips v Woodford 267 F.3d 966 (9th):  
19 Wilson v Lawrence County 260 F.3d 946 (8th):  
20 If officers use false evidence, including false testimony  
21 to secure a conviction, the defendant's due process  
rights are violated. US v Haese 162 F.3d 359 (5th Cir):  
22 Defendants convictions must be reversed on due process  
23 grounds where the government knowingly elicits or  
24 fails to correct, materially false statements from its  
25 witnesses. Schaff v JNYDER Prosecutor's knowing  
use of perjured testimony violates due process clause.

26 Mesarosh v US 352 US 1, 1 LEd 2d 1,71 S 84 1:  
27 Truthfulness of testimony... the dignity of the United

1 States Government will not permit the conviction of  
2 Any person on tainted testimony  
3 US v Young 17 F.3d 1201, 1204 (9th 1994); Even if the  
4 Government unwittingly presents false evidence "  
5 STATE v LARSON 160 Wash. App 577 (2011) 249 P.3d 669 18  
6 i Use of False or Perjured testimony - Conviction  
7 obtained by the knowing use of perjured testimony is  
8 fundamentally unfair and must be set aside if there is  
9 any reasonable likelihood that the false testimony  
10 could have affected the judgement of the jury.

recall that Brown shared Percell and Manning had best via  
Johnasha Manning And Courtney Garrett  
The Court, upon giving its verdict, stated that.  
it did not think Johnasha Manning's testimony  
was germane but actually was most important.  
unless its reasoning was a decision to ignore  
immediate vicinity eye witness testimony and  
knowledge that favors Mr. Wilson.

Manning testified that she did not see the  
man who laid on top of her with a gun. She  
identified the shooter she saw as someone  
other than Mr. Wilson with a hairstyle Mr. Wilson  
did not have, which was dreads.

As evidenced from Percell, Manning (T. Williams  
and Rios) and the video there was only one shooter  
in the location where Foster and Brown were shot.

When it took place there were only 6 people:  
3 running flat out away (Foster, Brown, Percell)  
2 ending up on the side of a red vehicle  
(1 being Manning and 1 being Wilson atop  
Manning and parallel to the red vehicle. The

1 remaining being the shooter with a 9mm firearm  
2 which was not Marshall Wilson evidenced by video  
3 police testimony, witness and victim testimony.  
4 Manning testified that she was roughly 5 steps  
5 from Olivia and that only 1. herself 2. Olivia  
6 3. Daquan Foster 4. Wyatt Perrell 5. The guy who dove  
7 on top of her and 6. The shooter who approached  
8 and began shooting (The prosecution and detectives  
9 openly stated that Wilson was on the ground  
10 for the brunt of the entire shooting) were present.  
11 NOTE: Video footage shows Manning face to face  
12 with Wilson as the shooter approaches

13 Please take this into account as I tie  
14 pieces together.

15 DOT 2 DATE 40 LWPD Jason Cattell 10/29/17 at  
16 Crime scene speaks to Courtney Garrett but first

17 DOT 44 DATE 271 TPD HQ 10/29/17 James

18 Buchanan speaks with Vince-Pamela Kouassi who was  
19 walking with Mannings Girlfriend. Kouassi said  
20 a tall black male wearing a dark shirt or jersey  
21 was arguing with someone and then tried to  
22 punch someone. The fight ended, people walked away  
23 Kouassi heard gunshot and Manning arguing with  
24 someone. Kouassi did not see who shot

25 Now Courtney Garrett identified Wilson  
26 as the guy she saw "getting up to defend  
27 himself, he was very light skinned and his hat  
28 was off, he was not slim" Ms. Garrett was unable  
to identify the shooter she saw.

29 DOT 2 LWPD J. Cattell-Garrett was within  
30-40 feet away from the shooting (Garrett said).  
31 where Foster was at. She saw a black male with  
32 dreads wearing all gray clothes right next to her shot.

33 Dot 61 DATE 430 TPD HQ Recorded Interview  
34 10/29/17 Circa 0230 Det. McKenzie & Song Ms. Garrett  
35 saw quan talking to a male who was on the ground,  
36 the Fosters walking away and the male followed.  
37 Johnasha Manning ran over and got into the male's  
38 face and began arguing. As she watched Manning  
39 and Wilson argue a male "right next" to her pulled  
40 out a pistol and started shooting... she described  
41 him as a black male with skin a shade or two  
42 darker than her own wearing dreads, she was not  
43

1 Sure but thought he was wearing all gray doggers. This  
2 shooter was one and/or 2 arm lengths from her. NOTE  
3 the video shows a gray figure with an extended arm  
4 towards the feet and towards the window that  
5 was shot out of the silver car in thoroughfare of the  
6 parking lot. Ms. Garrett expressed she thought there  
7 were two shooters when asked why she thought that there  
8 were two different shooters. She said that since she  
9 was looking at one but continued to hear shots after  
10 the other shooter in gray stopped. She did not see  
11 another. The shooter she saw she believed had a silver  
12 gun in one hand. She also heard someone yelling lets go while  
13 the shots were being fired.

14 Again Ms. Garrett watched Wilson and Manning face  
15 to face, 40 feet away argue while the shooter in gray  
16 shot. Recall Kouassi heard Manning yelling when the  
17 shots began.

18 DOT 13 BATE 85 TPD 10/29/17 Circa 0200hrs Matthew  
19 Collins transported Manning to TPD HQ. Manning was upset  
20 yelling and crying. She exclaimed "I can still see  
21 that n-word face, a nappy head N-word with two braids.  
22 DOT 54 BATE 382 TPD JHQ 10/29/17 Det. James Buchanan  
23 interviewed Manning. She observed someone shooting  
24 within 3 feet of her close range, subject mid-late  
25 20's Two French Braided dreads, Nappy beard and Black  
26 Shirt, Black gun with an extended clip. Manning  
27 explained that a light skinned black male wearing  
28 a black puffy jacket dove on top of her and asked  
her if she were alright. Manning believed this subject was  
associated with the shooter. NOTE AGAIN: Wilson is the  
only person who was seen getting up from the ground  
STOP Manning. DEFENSE INTERVIEW 6-26-19

Ms. Manning stated she did not see what happened  
before the shooting. A guy jumped on top of her, hair  
not long and cut like a guys he had on a dark bubble  
jacket and a logo on his shirt. "I was on my back; he  
shielded me. He got off and stumbled/run around car.  
The shooter had dreads and stopped shooting when the  
mag was empty because it makes a unique sound. He was  
black and had "hair like mine". The "dude" got on top of me  
We were parallel to her car." No attack or assault  
from the guy. He had "No hat" and "hair Sixty"  
NOTE Ms. Brown stated Manning and Wyatt Perrell had best

1 View of the shooting

2 WYATT PERCELL WAS ONE OF THE FIVE PEOPLE PRESENT  
3 OUTSIDE OF CARS IN THE VIEW OF THE CAMERA, PERCELL (WP)  
4 WAS WEARING A PINK SHIRT, WHEN THE SHOOTER APPROACHED  
5 AND BEGAN SHOOTING. WP STATED AND TESTIFIED THE  
6 GUY THAT WAS FIGHTING WAS NOT A SHOOTER, HE WAS  
7 ON/BY ONE SIDE OF FOSTER WHILE BROWN WAS ON/BY  
8 THE OTHER. WP STATED WILSON CAME BACK TO FIGHT NOT  
9 SHOOT AT OR KILL ANYONE, THE GUY WITH LONG HAIR WALKED  
10 UP AND SHOT. WP SAW ONLY ONE SHOOTER, JUST AS  
11 MANNING (AND BROWN'S TPD CONTACTS WITHIN THE YEAR AND  
12 A HALF BEFORE HER NEW MEMORY TOOK FRUIT) WHO WAS IN  
13 THE BEST POSITION, THE VIDEO ALSO ONLY SHOWS 1  
14 SHOOTER WHERE THE SHOOTING BEGINS.

15 DOT 34 BATE 21B TPD JET JEFF KATZ CSI WP SAW FOSTER  
16 (DF) IN CONFRONTATION. ANOTHER 2ND SUBJECT APPROACHED  
17 AND BEGAN SHOOTING AT DF. DOT 71 BATE 510 TPD HQ  
18 0253 HRS INTERVIEW REPORT VOID CLOTHIER 10-29-17

19 WP DESCRIBED LATINO MALE WITH WAVY DARK BROWN HAIR  
20 AS THE PERSON DF HAD A CONFRONTATION WITH, AND A  
21 2ND SUBJECT APPROACHED PULLED A GUN FROM HIS WAIST  
22 AND SHOT AT DF. THE SECOND SUBJECT HAD LONG HAIR AND  
23 BRAIDS. DOT 111 BATE 1811 ACTUAL TRANSCRIPT TPD HQ

24 VOID/CLOTHIER (P9) 1818 CLOTHIER ASKS IF BOTH SUBJECTS CAME  
25 BACK OR JUST THE GUY WITH THE GUN? WP: "SO, THE NO-NO-  
SO THE GUY THAT STARTED, THAT STARTED WITH QUAN CAME  
BACK TO ARGUE MORE WITH HIM, AND THEN THATS WHEN  
THE GUY WITH THE GUN CAME UP. WP STATES THE FIGHTER  
WAS ABOUT 5'8" WITH CURLY/WAVY HAIR VOID ASK HOW  
CLOSE THE FIGHTER WAS TO WP WP RESPONDS "PRETTY PRETTY,  
CLOSE LIKE IF I WANTED TO REACH OUT AND TOUCH YOU LIKE"

26 CLOTHIER ASKS HOW CLOSE THE SHOOTER WAS. WP: SHARES  
27 PRETTY CLOSE... COULD HAVE SHOT... ME OR QUAN. WP REITERATES  
THE SHOOTER WAS AS CLOSE AS THE DETECTIVES AND  
HE IN THE INTERVIEW ROOM DEFENSE INTERVIEW  
28 THERE WAS STILL ONLY ONE SHOOTER HE SAW, HE WAS  
ONLY 2 FEET AWAY FROM THE ACTUAL GUN. WP REITERATES  
"SO WHEN THE GUY THAT HE GOT INTO AN ALTERCATION WITH CAME  
RUNNING BACK TO TRY TO FIGHT MR. FOSTER AGAIN THATS WHEN  
THE OTHER GUY COMES UP AND SAID DO WE HAVE A PROBLEM... AND..  
HE PULLED THE GUN STRAIGHT OUT."

The video, Perrell, Brown originally, and Manning only  
29 SAW 1 shooter in that location before DF, WP, CB, ran

before Manning and Wilson end up on the side of that Red car. In the light most favorable to the state Brown's testimony is impeached by the video alone.

FIRST let's broach TAMEKA WILLIAMS and K. RIOS

TAMEKA and Kristina are not liars but they may, for arguments sake, be wrong by misperception, thus still credible.

TAMEKA Williams at trial identified Wilson as the person she saw shooting. However when shown the video she picked out the shooter who was firing the 9MM Gun who was not Marshall Wilson. When asked who the person was getting up from the side of the car (Wilson and Manning) TW replied she could not see that. Given that was roughly 72 Feet away, 8 parking stalls away with cars in them (not the 2 stalls prosecution said in trial)

DO take note that TW did duck down at some point and her view was obstructed. Treshawn Perry TW's friend and passenger said they were both in the car ducking down. TW ADMITS to ducking down. DOT 117 BATE 1831 TPD HQ 10/31/17 VOID/clothes Interview. TW: states she saw the guy sitting on a BOX style Old BMW/BENZ.

The guy she saw, she never saw get in a fight, never saw him hit the ground or hit DF never saw DF hit him. This guy worked from the car to the wife (J.B and T. Foster. This can't be Wilson because Wilson was in the fight getting up off the ground. The person who shot walked up to DF and Brown and let off a whole clip. "Everybody ran even his friends. He just walked off like nothing happened... like he was on something"

This is a place to take note because the person on video shooting backs up while shooting Wilson is seen after the 10 flashes/13 gun shots, getting up from the ground and walking slowly away as is J. Manning. TW meshes two descriptions together, the guy the prosecutors dubbed birthday boy TW described as light skin, hat (he had no hat) blue coat white t. brown hair sticking out of hat, The hair was curly and short (M. Wilson's style) with a gold necklace

TW describes the shooter as light skinned scruffy Blue coat, brown curly hair (without hair sticking out of hat)

1 no hat and an orange shirt. TW admits to ducking and lifting  
2 back up. She notes that when the shooting happens  
3 the shooter is by himself and the car drives off.

4 TW: Sees Wilson walk passed toward the cars  
5 but was confused when the car left because  
6 she saw the guy with dreads driving; but  
7 testified Mr. Wilson got in the back of this 90's  
8 Box Benz/BMW and sped off. TW then left the  
9 lot herself. NOTE That both Wilson is  
seen at the scene after she left and so  
is KK/Michealias car. Wilson left in a black  
car parked over 50 yards away with Rios  
Ms. Williams also only saw 1 shooter and from  
her vantage point she only saw the back of  
the shooter.

10 Ms. Williams did not lie about what she saw, but  
11 what she believes may not be the actual truth.

12 RIOS In her interview was just as hysterical  
13 and crying at parts of her interview. Ms. Rios  
14 stated her belief based on what happened  
15 and what she alleges Wilson said in the car  
16 while passed out. Getting gave credit to Rios  
17 drunken state, which was the same at her  
interview. Rios stated things like "what is  
one to believe?" She testified she saw only  
1 hand go up where the shooting began.

18 But it is important to note Rios never  
19 saw the fight never saw Wilson hit the ground  
nor punch or be punched. She looked towards  
20 Connexion and saw a hand go up and flashes.  
In her interview she states over and over again  
21 that she isn't sure who shot but she saw  
something, that much is true. IF she believes  
22 something and says "I know" that is truth to her  
but its not because what she CLEARLY saw.

23 The prosecution pointed out that the person  
shooting the gun could not be Wilson because  
he is on the ground on the side of that car.  
24 MR. Wilson was charged not with any gun but  
25 specifically the 40 caliber used at the crime  
26 scene. The 40 cal shells closest shell to Wilson  
27 circa 18 feet away the furthest being about 36 feet

1 away. The location of these shells as noted are where  
2 the gray figure and alleged birthday boy appear in the  
3 video once the shooting begins. Also take note  
4 that there was only 1 damaged 9MM that was  
5 beyond a determination of being fired from the  
6 same firearm or not. The 9MM shells leave a perfect  
7 trail along the shooters path.

8 Further detectives testified that some flashes  
9 may not be seen for the lighting or angle and  
10 other factors may mask it.

11 Knowledge/knowingly instruction, the jury  
12 requested the definition in order to apply  
13 it to the accomplice wording. The court told  
14 the jury to refer to the instruction, in  
15 which there was none.

16 The prosecution suggested we remove all  
17 of the instructions from a certain page to a  
18 certain page as they related to the firearm charge.  
19 The instruction was contained within. This was  
20 a simple mismanagement equalling prosecutorial  
21 misconduct.

22 For all of these reasons I ask for a new  
23 trial or a finding of actual innocence  
24 barring those I ask for the Death Penalty  
25 so that not one more American man will be,  
26 or woman will be, wrongfully convicted and  
27 swept under the rug. For when they are this  
28 case of injustice will be remembered.

29 Sincerely,

30 SEE  
31 ATTACHMENTS  
32 A and B

33 Marshall Marlon Wilson I

34 11-22-19 12:15 noon

The Supreme Court  
State of Washington



June 4, 2020

Dear Members of the Judiciary and the Legal Community:

We are compelled by recent events to join other state supreme courts around the nation in addressing our legal community.

The devaluation and degradation of black lives is not a recent event. It is a persistent and systemic injustice that predates this nation's founding. But recent events have brought to the forefront of our collective consciousness a painful fact that is, for too many of our citizens, common knowledge: the injustices faced by black Americans are not relics of the past. We continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems. Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed.

The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.

As judges, we must recognize the role we have played in devaluing black lives. This very court once held that a cemetery could lawfully deny grieving black parents the right to bury their infant. We cannot undo this wrong—but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.

As lawyers and members of the bar, we must recognize the harms that are caused when meritorious claims go unaddressed due to systemic inequities or the lack of financial, personal, or systemic support. And we must also recognize that this is not how a *justice* system must operate. Too often in the legal profession, we feel bound by tradition and the way things have “always” been. We must remember that even the most venerable precedent must be struck down when it is incorrect and harmful. The systemic oppression of black Americans is not merely incorrect and harmful; it is shameful and deadly.

Finally, as individuals, we must recognize that systemic racial injustice against black Americans is not an omnipresent specter that will inevitably persist. It is the collective product of each of our individual actions—every action, every day. It is only by carefully reflecting on our actions, taking individual responsibility for them, and constantly striving for better that we can address the shameful legacy we inherit. We call on every member of our legal community to reflect on this moment and ask ourselves how we may work together to eradicate racism.

As we lean in to do this hard and necessary work, may we also remember to support our black colleagues by lifting their voices. Listening to and acknowledging their experiences will enrich and inform our shared cause of dismantling systemic racism.

We go by the title of “Justice” and we reaffirm our deepest level of commitment to achieving justice by ending racism. We urge you to join us in these efforts. This is our moral imperative.

Sincerely,



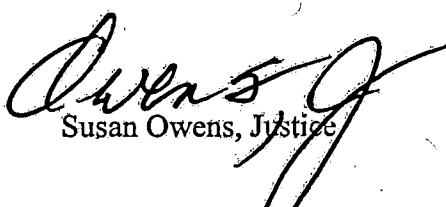
Debra L. Stephens,  
Chief Justice



Charles W. Johnson,  
Justice



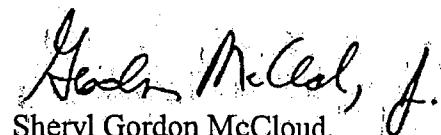
Barbara A. Madsen,  
Justice



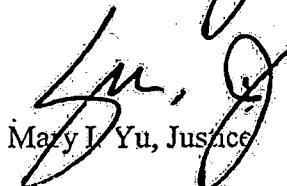
Susan Owens, Justice



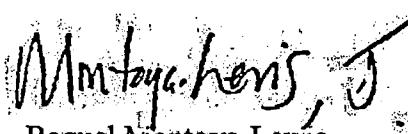
Steven C. González,  
Justice



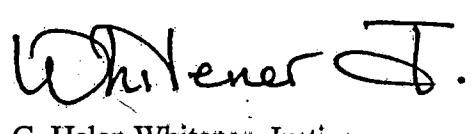
Sheryl Gordon McCloud,  
Justice



Mary I. Yu, Justice



Raquel Montoya-Lewis,  
Justice



G. Helen Whitener, Justice